IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.149 OF 2006

M/s.Bright Construction Petitioner

versus

The Chief Officer,
Dapoli Nagar Panchayat & anr. Respondents

Shri P.D.Dalvi for petitioner.
Shri A.B.Ketkar for respondent no.2.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 10th February 2006

PC :

1. Rule. Rule made returnable forthwith. Contesting respondent is served and Shri Ketkar appears for him. Shri Ketkar waives service. By consent heard forthwith.

2. Petitioner filed Civil Suit against first respondent Panchayat seeking permanent injunction against respondent no.1 Panchayat from demolishing his structure. During pendency of the Regular Civil Suit No.87 of 2005 second respondent preferred an application (Exhibit-12) seeking to join as a party defendant to this suit. The application specifically invokes Order 1, Rule 10 of CPC as is clear from the reading

thereof.

3. This application was placed before the Trial Court and by order under challenge the same has been allowed. The Trial Court has directed that respondent no.2 be added as defendant to the above civil suit. Further direction is issued to the petitioner-plaintiff to carry out necessary amendment.

4. Shri Dalvi appearing for petitioner points out that in the entire application it is not stated as to how the second respondent is a necessary party or his presence before the Court was necessary for the Court to effectively and completely adjudicate upon and settle all questions involved in the suit. On the other hand, it is contended by him that second respondent cannot be a necessary party to a suit which is filed against first respondent Panchayat which is the local authority. It has granted building permissions and it is the one who is implementing the provisions of Bombay Village Panchayat Act, 1958. The application preferred by the second respondent states that he is a vigilant resident of Dapoli and he has moved the authorities against unauthorised construction in

Dapoli. Even as far as said structure is concerned, the applicant has made a complaint and it is pursuant to the same that the proceedings for it's demolition were initiated. Therefore, his presence is necessary in the suit.

5. In my view, the submission of Shri Ketkar made before me that the application really invokes Order 1 Rule 8A of the CPC and not Order 1, Rule 10(2) of CPC cannot be accepted. The two provisions operate in separate and distinct contingencies. As far as Order 1 Rule 8(A) is concerned, it is open for the Court after it is satisfied that a person is interested in any question of law which is directly and substantially in issue in the suit and that it is in public interest to allow such person to present his opinion on that question of law, the Court may permit him to present such opinion and to take such part in the proceedings of the suit as the Court may specify. This does not necessarily contemplate joining such a person as a party. It is for the Court to permit him in a manner permissible by law to present his opinion. In other words, it is more in the nature of intervention. As far as Order 1, Rule 10 is concerned and more particularly Sub Rule 2

thereof, it is Court’s power to either strike out or add the parties. There, if the party is necessary, the the plaintiff has no choice and the Court must direct it’s impleadment. In the present case, it is not demonstrated as to how the presence of second respondent is necessary and without his presence the suit or the issues therein cannot be adjudicated upon. It is for the Panchayat to defend it’s action and it is always open for the second respondent to place before the Panchayat such materials as would enable the Panchayat to defend it’s action but that does not mean that he should be joined as a party defendant. The application is, therefore, mis conceived.

6. If the petitioner seeks to intervene at the stage where an issue of law is settled or likely to be settled by the Court, then it would always be open for him to apply for intervention at that stage. However, presently he is not invoking such provision but seeks his joinder, which does not appear to be permissible in law. In the result Rule is made absolute in terms of prayer clause (a). No order as to costs. Liberty, however, is reserved to the second respondent to apply under Order I, Rule 8(A) of the CPC..

Petition disposed of.

(S.C.DHARMADHIKARI, J.)